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DEPARTMENT OF COMMERCE -- BUREAU OF MINES

MINING LAWS OF COLOMBIA



BY

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IX. MINING LAWS OF COLOMBIA¹

By A. D. Garman²

PREFATORY NOTE

This paper presents one of a series of digests of foreign mining legislation and court decisions which is being prepared in advance of a general report relative to the right of American citizens to explore for minerals and to own and operate mines in various foreign countries. This interpretation of the laws of Colombia has been prepared from the best available information in Washington, but is released subject to correction and amplification, if necessary, by the proper American diplomatic and consular officers to whom it is being referred through the courtesy of the Department of State.

SYNOPSIS OF LAW

Minerals in Colombia belong to the owner of the soil unless otherwise provided in the law. The following lands and deposits, however, are described as fiscal property of the State:

Class 1. The public lands, mines, and salines which belong to the individual States (now Departments) prior to the adoption of the present constitution (1886).

Class 2. All deposits of gold, silver, platinum and precious stones.

Class 3. All copper deposits.

Class 4. All other mineral deposits in public lands, such as coal, iron, sulphur, petroleum, asphalt, etc.

Class 5. All deposits of guano and other fertilizers discovered on lands which either are or have been public.

By grants, or adjudications, under existing law, ownership of the surface and subsoil is separate. But title to the mine always carries with it the right

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2 Principal translator, U. S. Bureau of Mines, Washington, D. C.

to use the land necessary to work the mine (Art. 3). The owner of the mine is responsible, however, for damages to the surface-owner (Art. 191 ff.).

Rights of Aliens

Foreigners in Colombia enjoy the same rights as are granted to Colombians by the laws of the nation to which the foreigner belongs -- subject to stipulations in public treaties to the contrary (National Constitution, Art. 11). Law 72 of 1910, however, contains a local and temporary discrimination against aliens in the following terms: "Upon the ratification of the present law, and while the codes and laws on mines and public lands are undergoing revision and reform...all adjudication of nationally owned property to foreign individuals, entities, or companies in the region of Chocó and Darien shall be suspended."

Foreigners need not incorporate under the laws of Colombia, but foreign companies must be registered there. (Legislative Decrees Nos. 2 and 37 of 1906.) Companies or corporations recognized as juristic persons have no other rights than those pertaining to Colombian individuals. (Constitution, Art. 14.)

Prospecting

The only general requirement for securing possession and ownership of mines is the "legal capacity for acquiring dominion over things" pursuant to the usual laws (Art. 2).

By later legislation, however, emeralds, petroleum, hydrocarbons in general, and salt are excepted from denouncement, and are either government monopolies or are worked by contract with the States.

There are also certain local exceptions with respect to other minerals:

1. Gold and silver mines which have been exploited on behalf of the nation in Marmota, Supia, and Santa Anna. (Law 38 of 1887, Art. 6.)
2. Gold placer mines within the limits of patented vein mines which have paid the tax established by law. (Law 272 of 1875, Art. 52.)

Certain areas are excepted:

- (a) The beds of navigable streams. (Law 72 of 1910, Art. 5.)
- (b) The bed and banks of the River Cauca, up to high-flood limit. (Law 38 of 1887.)
- (c) Lands belonging to educational or charitable institutions, except with the authorization of the respective owners. (Decree No. 1112 of 1905, Art. 5.)

- (d) Lands on which mines reserved by the nation are situated. (Legislative Decree No. 42 of 1905, Art. 1.)

The following exceptions apply more particularly to prospecting on private property:

(a) Within the area of a settlement and within 100 meters from its most outlying houses, unless the working of the mine be in a direction away from such settlement and without probable damage thereto, proximate or remote. In such cases permission may be granted by the police.

(b) Within the courts, gardens, orchards, or lawns of rural dwellings, except by the owner.

(c) In other inclosed and permanently cultivated lands, except by giving previous notice to the owner and furnishing security if required.

The owner's permission is also required in connection with:

(a) Alluvial deposits on privately owned land which is cultivated or used for cattle-raising. (Law 38 of 1887, Art. 3.)

(b) Lode deposits on privately owned land in certain Departments where by prior laws the proprietor of the soil owned also the subsoil, when such land is cultivated or used for cattle-raising.

Prospecting itself gives no preferential right. This belongs to the first discoverer, who is obliged to give notice of discovery to the municipal chief of the district (or one of the districts) where the mine is situated and to make a formal denouncement of the mine within 90 days after the discovery is deemed to have been made.

Classification and Area of Mines

Mines or mineral deposits are divided into three classes according to their formation: (1) Lode deposits, such as those of precious stones, silver, and gold; (2) sedimentary deposits, such as are ordinarily those of iron and copper; and (3) alluvial deposits or placers.

The discoverer of a lode is entitled to an area not exceeding 1,800 by 240 meters (i.e., three pertenencias, each 600 by 240 meters, measured upon the surface and not on a horizontal plane.

For placers the area is either a square with a base of 3 kilometers or a rectangle 2 by 5 kilometers.

For sedimentary deposits, the area is a square with a base of 2 kilometers.

Denouncers of lode mines situated in lands belonging to the State may secure up to 500 hectares in land continuous with the claims to which they are entitled by law. (Law 75 of 1887, Art. 1.)

Concessions

In order to work the deposits of classes 4 and 5, contracts must be entered into with the Government. These contracts do not require ratification by Congress, provided that:

1. The duration does not exceed 30 years (petroleum, 55; coal and fertilizers, 50).
2. The State be given free title at the expiration of the contract to all the transportation facilities and articles used in the operation of the mine.
3. The State's share of the gross production be at least 15 per cent.

In the granting of such concessions, no limitation is imposed upon area, and no percentage of ownership by nationals is stipulated. Monopolistic concessions, however, are not expressly provided for, and Legislative Act No. 3 of 1910, Art. 4 (incorporated in the Constitution under Art. 31) declares that no monopoly may be established except as a revenue expedient and by virtue of law.

Fees and Taxes

The proceedings for securing possession of mines are taken at the expense of the denouncers, who are obliged to furnish the public official and two experts who participate therein with the food and vehicles required. They also pay, by way of fees, to the official, 80 centavos for each myriameter (= 6.2137 miles) of distance he is obliged to travel in order to reach the spot, and 1 peso for the act of giving possession. To each expert they pay 40 centavos for each hour's work and 80 centavos for each myriameter of distance. (Law 292 of 1875, Art. 14.)

Other fees and taxes are as follows:

For the denouncement of a gold or silver mine, 50 centavos.

For the title of concession of such a mine, 4 pesos gold.

For every vein mine of gold or silver, whether worked or not, an annual tax of 1 peso gold for each claim (pertenencia).

Any such mines having an area either greater or less than one claim, pay 1 peso gold annually per claim or fraction thereof.

On each gold placer mine of the regulation size and shape -- that is, a square with a base of 5 kilometers. (Art. 28) -- 1 peso gold annually. (Law 59 of 1909, Art. 2)

On each mine of precious stones with an area not exceeding 1 square kilometer, 5 pesos annually, and on any excess area in the same proportion.

On copper mines, one-half of the duties paid on mines of precious stones. (Law 21 of 1909, Art. 8.)

Law 292 of 1875, Art. 24, provides that the owner of a mine can abandon any determinate part of it and thereafter pay the tax only on the part which he retains.

Perpetual ownership of a mine, and freedom thereafter from taxation, can be obtained by paying in a lump sum twice the amount which would have to be paid in taxes in 20 years. (Law 59 of 1909, Art. 3.)

Cancellations

Patents or titles issued under the mining code are void in the following cases:

1. When the signature of the Governor of the Department and of the Secretary of Hacienda is lacking.
2. When the patents or titles have not been duly registered.
3. When a greater area is granted than the law allows.
4. When, in denouncing a mine, a name has been used which is different from that by which the region was known where the mine is situated.
5. When the name of the last possessor of the mine is omitted, although the denouncer knows it, and also when another is substituted for said name.
6. When any owner of an adjoining mine is not cited to appear at the time possession is given.
7. When the documents inserted in the title are not in accord with the originals from which they were copied.

All these nullities may be remedied, however, unless bad faith is proved on the part of the title-holder.

After discovery has been made, the right to the mine in question can be lost only in the following cases:

1. When the discoverer does not appear for the purpose of denouncing it within 90 days after the discovery.
2. When the discoverer has undertaken to deliver to the official commissioned for giving possession of the mine the instructions issued by the executive power, and fails to do so within the prescribed time limit (20 days plus ordinary traveling time).
3. When the discoverer fails to apply for the possession of the mine within 60 days from the expiration of the period (three weeks) for posting notice of the possession to be given.
4. When the discoverer fails to solicit the issuance of the title or patent within 60 days after receiving possession.
5. When the discoverer fails to pay the tax punctually.
6. When, having been cited to appear when possession of a mine is given, the discoverer makes no opposition and part or all of his own mine is comprised in the possession given (Art. 118).

These time limits are subject to extension, however, for cause shown.

Water Rights

The discoverer of the first mine in any region has a preferential right to the water required for an ordinary establishment, and may avail himself of this right at any time. Other discoverers have a like right, in strict order of seniority. The soil-owner, however, can not be deprived of the water required for his family, his animals, for irrigation, or for any kind of machinery set up or begun to be set up. (Arts. 205-208.)

Suspensions

Mining operations may be suspended or forbidden under the following circumstances:

If bond is not furnished, on application of the surface-owner and to the satisfaction of the municipal chief to whom such application is made, for the payment of damage resulting from the working of a mine (Art. 197).

In those mines whose working is prejudicial to public works, settlements, the waters used therein, and private dwellings, unless the owner or operator of such mines provides other suitable water and repairs at his expense the damage caused, so that such works may continue to operate without interruption.

Oppositions

Oppositions may be made at any time after the denouncement of a mine is received up to the end of the period for posting; and by the owners of adjoining mines or by any one claiming superior right by reason of prior discovery, at the time possession of the new mine is given. In the former case, they may be made either before the official who has been commissioned for giving possession, the executive authority or the judge who is to take cognizance of the cause. In the latter case, the opposition must be formulated before the same judge within nine days plus ordinary traveling time reckoned from the date on which the possession is going to be given (Ch. VI). In all cases of opposition giving rise to a suit at law, the 60-day period in which to solicit possession is counted from the day when the official commissioned for this purpose received the court records of the case (Art. 57).

Miscellaneous

Export duties have been abolished. (Law 19 of 1909, Art. 1.) There are import duties of 1 per cent per kilogram on mining material. (Law 59 of 1909, Art. 1.)

Labor is scarce; foreign labor is excluded, though some of the conservative papers are advocating its admission.

Exchange

At par the Columbian peso is worth \$0.9733 in United States currency, and recently it has been at a slight premium; the average exchange value for 1923, as reported by the Federal Reserve Board, was \$0.9769.